

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SAN DIEGO UNIFIED PORT
DISTRICT,

Plaintiff,

vs.

UNDERWRITERS AT LLOYD’S,
LONDON AND OTHER LONDON
MARKET INSURERS; NORTH
PACIFIC INSURANCE COMPANY,
LTD.,

Defendants.

NORTH PACIFIC INSURANCE
COMPANY,

Counterclaimant,

vs.

SAN DIEGO UNIFIED PORT
DISTRICT,

Counter-Defendant.

CASE NO. 15-cv-00022-WQH-
JLB

ORDER

HAYES, Judge:

The matter before the Court is the Motion for Reconsideration of Court’s Order Denying Plaintiff’s Motion to Dismiss or, in the Alternative, Motion for a More Definite Statement (ECF No. 47) filed by Plaintiff and Counter-Defendant San Diego Unified Port District.

I. Background

On January 6, 2015, Plaintiff San Diego Unified Port District commenced this action by filing the Complaint in this Court against Defendants Underwriters at Lloyd’s London and Other London Market Insurers (“Lloyd’s”) and North Pacific Insurance

1 Company, Ltd. (ECF No. 1). On March 26, 2015, Plaintiff filed the First Amended
2 Complaint (“FAC”), which is the operative complaint in this case. (ECF No. 12). On
3 May 28, 2015, Defendant Lloyd’s filed an answer. (ECF No. 21). On May 28, 2015,
4 Defendant North Pacific filed an Answer and Counterclaim for Reimbursement against
5 Plaintiff. (ECF No. 20).

6 On June 22, 2015, Plaintiff filed a motion to dismiss the Counterclaim for
7 Reimbursement, accompanied by a declaration and two exhibits. (ECF No. 25).
8 Plaintiff contended that Defendant North Pacific was required to submit a written claim
9 to Plaintiff pursuant to California’s Tort Claims Act (“CTCA”), California Government
10 Code §§ 900, *et seq.*, prior to filing the Counterclaim for Reimbursement because
11 Plaintiff is a public agency. Plaintiff contended that Defendant did not comply with the
12 written claim requirement. In opposition, Defendant contended that it was not required
13 to submit a written claim pursuant to the CTCA because (1) Plaintiff was not listed on
14 the California Secretary of State’s Roster of Public Agencies and (2) the written claim
15 requirement “does not apply to a defendant’s counterclaims against a government-entity
16 plaintiff that relate[s] to the same set of facts that are alleged in the
17 government-plaintiffs complaint.” (ECF No. 29 at 10).

18 On August 28, 2015, the Court issued an Order denying Plaintiff’s motion. (ECF
19 No. 44). The Court concluded that the Port District was not listed in the Roster of
20 Public Agencies kept by the Secretary of State and therefore not subject to the Act. In
21 reaching that conclusion, the Court took judicial notice of a document submitted by
22 Defendant from the Secretary of State, dated July 8, 2015, titled “CERTIFICATE OF
23 NO RECORD,” stating that the Secretary of State had “failed to find any records of a
24 filing in this office and in accordance with California Government Code section 53051”
25 for Plaintiff. The Court concluded that “[t]he fact that Plaintiff submitted four
26 documents to the Secretary of State pertaining to the Roster of Public Agencies between
27 April 2013 and January 2015 does not establish that these filings were ‘on file, or
28 placed on file, in the Roster of Public Agencies’ during the 70 days immediately

1 following the accrual of Defendant North Pacific's claim." *Id.* at 8. The Court also
 2 concluded that "Plaintiff is not entitled to 'shield itself from a [counterclaim] asserted
 3 by the defendant in the same suit and arising from' the same contract upon which
 4 Plaintiff commenced this action." *Id.* at 9.

5 On September 23, 2015, Plaintiff filed a Motion for Reconsideration
 6 accompanied by a request for judicial notice of a letter from California Secretary of
 7 State Business Programs Division to Simon M. Kann, Deputy General Counsel, of San
 8 Diego Unified Port District, dated September 3, 2015 and California Secretary of State,
 9 Certificate of Filing, dated September 3, 2015. (ECF No. 47). The letter states,

10 On approximately July 8, 2015, our office issued a Certificate of No
 11 Record in reference to a Statement of Facts/Roster of Public Agencies
 12 filing for San Diego Unified Port District in error.

13 The records of the Secretary of State's office reflect an initial Statement
 14 of Facts/Roster of Public Agencies filing was filed pursuant to California
 15 Government Code section 53051 for San Diego Unified Port District on
 16 January 22, 1964. Subsequent filings for San Diego Unified Port District
 17 have been filed over the years with the most recent update filed on July 1,
 18 2015.

19 (ECF No. 47-4 at 2). On October 9, 2015, Defendants filed an opposition. (ECF No.
 20 48). On October 19, 2015, Plaintiff filed a reply. (ECF No. 49).

21 **II. Requests for Judicial Notice**

22 Federal Rule of Evidence 201 provides that "[t]he court may judicially notice a
 23 fact that is not subject to reasonable dispute because it . . . is generally known within
 24 the trial court's territorial jurisdiction; or . . . can be accurately and readily determined
 25 from sources whose accuracy cannot reasonably be questioned." Fed R. Evid. 210(b).
 26 "[U]nder Fed. R. Evid. 201, a court may take judicial notice of 'matters of public
 27 record.'" *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (quoting *Mack*
 28 *v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir.1986)).

Plaintiff requests judicial notice of one exhibit, a Letter from California Secretary
 of State, Business Programs Division to Simon M. Kann, Deputy General Counsel, of
 San Diego Unified Port District, dated September 3, 2015 and California Secretary of

1 State, Certificate of Filing, dated September 3, 2015. (ECF No. 47-2 at 1-2). The Court
2 takes judicial notice of the exhibit appearing at ECF No. 47-4 as an unopposed certified
3 public record.

4 **III. Discussion**

5 Plaintiff requests that the Court reconsider its Order based upon “the Secretary
6 of State’s mistake in issuing a Certificate of No Record for the Port District in the
7 California Roster of Public Agencies.” (ECF No. 47-1 at 4). Plaintiff contends that “on
8 September 2, 2015, Plaintiff contacted the California Secretary of State, Business
9 programs Division to inquire about the status of the Port District’s listing on the
10 California Roster of Public Agencies.” (ECF No. 47-1 at 3). Plaintiff contends that
11 on September 9, 2015, the Secretary of State confirmed by letter that the Port District
12 is listed on the Roster of Public Agencies. *Id.* at 4. Plaintiff requests that the Court
13 determine that “the Port District is listed on the Roster of Public Agencies and that the
14 claims filing requirements of the Act do apply to claims against the Port District.” *Id.*
15 at 11.

16 Defendants contends that Plaintiff’s motion for reconsideration should be denied
17 because there are no proper grounds to reverse the prior decision. (ECF No. 48).
18 Defendants contends that even if Plaintiff was on the roster of public agencies, “the
19 second basis for the Court’s Order—the Act does not apply to counterclaims arising out
20 of the same set of facts alleged in a public entity plaintiff’s complaint” remains valid.
21 *Id.* at 4.

22 Plaintiff explains that it is not seeking to reverse the Court’s Order. (ECF No.
23 49). Plaintiff states that it is requesting that the Court “amend the Order to reflect that
24 the Port District was listed on the Roster and that the Act does apply to claims against
25 the Port District in an effort to eliminate any impact on potential third party claimants
26 and the Port District in the future.” *Id.*

27 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests
28 of finality and conservation of judicial resources.” *Kona Enters. Inc. v. Estate of*


1 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); *see also United Natn'l Ins. Co. v. Spectrum*
2 *Worldwide, Inc.*, 555 F.3d 772, 780 (9th Cir. 2009). “[A] motion for reconsideration
3 should not be granted, absent highly unusual circumstances, unless the district court is
4 presented with newly discovered evidence, committed clear error, or if there is an
5 intervening change in the controlling law.” *Marlyn Nutraceuticals, Inc. v. Mucos*
6 *Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (citing *389 Orange St.*
7 *Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999))

8 Plaintiff has presented new evidence to warrant reconsideration of the Court’s
9 August 28, 2015 Order (ECF No. 44). The Court concludes that Plaintiff has met its
10 burden in establishing that it is listed as a Public Agency on the Roster of Public
11 Agencies. The Motion to Dismiss is denied on grounds that “Plaintiff is not entitled to
12 ‘shield itself from a [counterclaim] asserted by the defendant in the same suit and
13 arising from’ the same contract upon which Plaintiff commenced this action.” (ECF
14 No. 44 at 9).

15 **VI. Conclusion**

16 IT IS HEREBY ORDERED that the Motion for Reconsideration is GRANTED.
17 (ECF No. 47) as stated in this order.

18 DATED: January 14, 2016

19 
20 **WILLIAM Q. HAYES**
United States District Judge